

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	00-0182
Regulation of Meter Service Providers	:	

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION
TO THE HEARING EXAMINER’S PROPOSED ORDER**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its attorneys, and files its Reply Brief on Exceptions to the Briefs on Exceptions (“BOEs”) filed by MidAmerican Energy Company (“MidAmerican”), Commonwealth Edison Company (“ComEd”), eMeter Corporation and PHASER Advanced Metering Services (collectively, the “MSP Coalition”), and Central Illinois Public Service Company and Union Electric Company (jointly, “Ameren”) to the Hearing Examiner’s Revised Proposed Order (“HEPO”) in the above-captioned proceeding.

I. REPLY TO BRIEFS ON EXCEPTIONS

A. Section 460.20 Application

Staff continues to oppose ComEd’s streamlining proposal. As previously stated, Staff believes that **all** market participants should comply with the same rules, including Illinois electric utilities that wish to offer services as meter service providers (“MSPs”). (Staff Reply Comments at 7)

The 83 Ill. Adm. Code 460 (“Part 460”) requirements are **not** redundant and unnecessarily burdensome for an Illinois electric utility providing metering service outside

its service territory. (ComEd BOE at 1, 2) Staff points out that ComEd's argument is inconsistent and contradictory. On one hand, ComEd claims that the Part 460 requirements are redundant, since Illinois electric utilities are already subject to them. On the other hand, ComEd claims that the requirements are unnecessarily burdensome, since they are difficult to achieve.

Staff finds the argument that Part 460 is unnecessarily burdensome to be particularly contrived when, in fact, ComEd claims that it has substantial experience providing advanced metering to its retail customers. (ComEd BOE at 4) What its BOE avoids addressing, however, is that if ComEd is not subject to all of the Part 460 provisions, it is feasible that it could contract with an inexperienced and inadequate meter worker to provide services outside its service territory.

ComEd further states that it has well-established business practices with regard to meter worker qualifications that bear a strong correspondence to those of Subpart E. (ComEd BOE at 5) If this is correct, Staff replies that ComEd should have no difficulty whatsoever in complying with the requirements of Subpart E. All things considered, ComEd has given no compelling reason in this proceeding for the Illinois Commerce Commission ("Commission") to grant electric utilities a special set of rules.

ComEd correctly points out that the Association of Illinois Electric Cooperatives ("AIEC") submitted Reply Comments supporting certification of Illinois electric utilities, municipalities and electric cooperatives as MSPs. (ComEd BOE at 6) ComEd then implies that because the AIEC did not address whether the certification process should be streamlined as to utilities or as to municipalities or cooperatives, the Commission should somehow conclude that AIEC supports ComEd's streamlining proposal. (Id.)

This is incorrect. AIEC's proposed language for Section 460.20 states that Part 460 "shall apply to an electric utility's operation when it is providing metering services in the service territory of another electric utility." (AIEC Reply Comments at 3) The AIEC position is diametrically opposed to that of ComEd.

Staff points out that the AIEC could have advanced the same arguments as ComEd concerning its substantial experience providing advanced metering to its retail customers or its well-established business practices with respect to meter worker qualifications that bear a strong correspondence to those of Subpart E. (See ComEd BOE at 5) However, the AIEC did not advance these arguments. Instead, as a potential MSP, the AIEC supported the certification of Illinois electric utilities, municipalities and electric cooperatives that provide metering services outside their service territories. (AIEC Reply Comments at 2) Therefore, ComEd's statement that "no potential MSP and no customer submitted reply comments in opposition to ComEd's proposal" is inaccurate. (See ComEd BOE at 6)

ComEd erroneously claims that under its streamlining proposal a utility providing advanced metering service outside its service territory would be subject to all of the standards of service applicable to MSPs. (ComEd BOE at 5) As stated in its Reply Comments, Staff found a number of specific sections of Part 460 that ComEd intentionally omitted from its streamlining proposal. (Staff Reply Comments at 8-15) Under ComEd's proposal, all Illinois electric utilities would be granted an exemption from 11 subsections of Subparts A and B, 9 subsections of Subpart C and 23 subsections of Subpart E. Staff believes that ComEd mischaracterizes its proposal as a streamlining of the certification process. More accurately, it is the creation of a market place in

which a utility offering metering services outside its service territory is not required to meet the same standards of service as other meter service providers.

MidAmerican claims that the electric utilities already not only meet but indeed surpass any requirement found in Part 460. (MidAmerican BOE at 1-2) Staff responds that if this is true, then there is no reason for the utilities to object to Part 460. By their own admissions, the utilities will have no additional requirements imposed on them by Part 460. If it is not true, then it is “rather unfair to impose requirements on potential MSPs and not impose the same requirements on Illinois utilities.” (HEPO at 13)

MidAmerican further suggests that the Commission will not fail to assert its jurisdiction over the utilities and their workers. (MidAmerican BOE at 2) In response, Staff suggests that the instant docket is the appropriate place for the Commission to assert its jurisdiction. The HEPO properly reflects the appropriate exercise of the Commission’s jurisdiction over Illinois electric utilities and their workers.

MidAmerican incorrectly alleges that electric utilities will be forced to comply with a “duplicate set of administrative hurdles.” (Id.) To the contrary, Part 460 does not require any duplication of training. If MidAmerican uses metering service workers within its territory that meet the requirements of Subpart E, the same workers can be used outside MidAmerican’s service territory to provide unbundled metering services. If MidAmerican does not have to meet the Subpart E standards outside its service territory, then it could have an unfair competitive advantage over other meter service providers.

MidAmerican implies that Staff has made fundamental changes in its position by recommending that electric utilities comply with Part 460 when providing metering

services outside their service territories. (Id.) This is simply untrue. Staff has consistently maintained throughout the workshops and related proceedings that electric utilities should not be allowed to provide metering services outside their service territories unless they are subject to the same rules as all other MSPs. (Docket No. 99-0013, ICC Staff Exhibit 17.0, lines 80-85; Tr. at 935-936)

However, since no consensus was reached at the workshops and no hope of compromise was apparent, Staff attempted to resolve the issue in the phase of the Unbundling Docket (Docket No. 99-0013) that will approve the pricing for the unbundling of metering services. Staff's attempt was thwarted at the Hearing in that proceeding when the Hearing Examiner suggested that Staff resolve the issue by proposing a revision to Part 460 during the First Notice period. (Docket No. 99-0013, Tr. at 936-937) Acting upon this suggestion, Staff proposed a revision to Section 460.20 to address the certification of utilities providing metering services outside their service territories. (See Staff Comments at 2, Attachment 1 thereto at 10)

The HEPO concludes that Staff's proposed revision to Section 460.20 should be adopted. (HEPO at 4) Staff supports the HEPO in this matter and recommends that no changes be made.

B. Section 460.100 Financial Qualifications

The proposed Part 460 appended to the HEPO correctly rejects ComEd's proposal (ComEd Comments at 8-9; ComEd BOE at 9-10) that Section 460.100(b)(1) be revised to require that the delivery services provider ("DSP") be named as an additional insured in the insurance coverage required of the MSP. (Appendix to HEPO at 15) However, the HEPO itself contains a sentence to which Staff has not agreed. The fol

following sentence should be stricken from page 9 of the HEPO: “In addition, the DSP shall be named as an additional insured in any such coverage.”

Staff does not agree that the DSP should have to be named as an additional insured in an MSP’s insurance coverage. (See Staff Reply Comments at 10) ComEd incorrectly implies that the insurance requirements of Section 460.100(b)(1) demand that the insurance policy recognize claims brought against the DSP. In reality, Section 460.100(b)(1) states: “The policy shall recognize claims brought against the MSP by its customers, the entity supplying electricity to the customer and the DSP.” (emphasis added) It does not require recognition of claims brought against the DSP. It is Staff’s position that this is not necessary in the MSP certification requirements. However, Staff does not oppose the utilities including such language in their tariffs.

C. Section 460.210 Erroneous or Defective Reports

MidAmerican maintains that the proposed subsection 460.210(b) gives the Commission no discretion except to revoke the certification of an MSP that fails to file a report or respond to a question from the Commission. MidAmerican suggests the word “shall” on line 6 of the subsection be revised to “may, in its discretion.” (MidAmerican Comments at 3, MidAmerican BOE at 4)

Staff disagrees with MidAmerican’s suggestion. Subsection 460.210(b) allows the MSP as much as 90 days to file the report or answer the question propounded by the Commission. The failure to comply with Commission reporting requirements should result in revocation of the MSP certification.

Furthermore, MidAmerican’s suggestion fails due to the lack of adequate substitute language. MidAmerican conveniently overlooks the requirement of the Illinois

Administrative Procedure Act that a rule that implements a discretionary power by the Commission must include the standards by which the Commission will exercise that power. (See 5 ILCS 100/5-20) An MSP that cannot comply with the Commission's straightforward reporting requirements should not be allowed to continue to install and maintain meters and operate the data exchanges necessary to facilitate the unbundling of metering services.

D. Section 460.320 Customer Call Centers

Staff maintains that it is appropriate to establish standards for customer call centers based on the authority granted to the Commission under Section 16-123 of the Public Utilities Act ("Act"). Customer call center standards will form the basis by which the Commission will review the reports filed by the MSPs. (See Staff Reply Comments at 15-17) The HEPO correctly concludes that the average answer times and abandon rate service standards are reasonable. (HEPO at 11)

As a reason for its objection to the establishment of standards, MidAmerican suggests that "the proposed call center service standards are inconsistent with the movement towards a competitive market place." (MidAmerican BOE at 2-3) Similarly, the MSP Coalition believes that "the Commission should allow the competitive market forces [to] regulate this activity." (MSP Coalition BOE at 8) As stated in its Reply Comments, Staff avers that the maintenance of a high level of customer service will likely encourage the development of the market. (Staff Reply Comments at 16) It is particularly appropriate at this early stage of market development to include standards to protect and assure the customers of this State.

The MSP Coalition implies that the Commission lacks the authority to require MSPs to maintain a customer call center. (MSP Coalition BOE at 7) The MSP Coalition's arguments contradict the recent Commission Order in Docket No. 99-0013. In its Third Interim Order, the Commission concluded that Section 16-108 of the Act gives it the authority to determine the extent to which delivery services should be unbundled. (Docket No. 99-0013, Third Interim Order at 20-21) Therefore, the Commission has been given the authority to allow only those MSPs that can successfully operate a customer call center to offer metering services on an unbundled basis.

The MSP Coalition has not set forth any compelling reason why MSPs should not be required to maintain customer call centers in the same manner as any other market participant. Rather, it states that its members will not be able to track the specific data required by Section 460.320. (MSP Coalition BOE at 8) It is Staff's position that if a MSP is unable to track the specific data required by Section 460.320, then that MSP should not be in the business of taking, recording and transmitting metering data upon which the electric utility industry relies.

As the HEPO correctly concludes, Section 16-123 of the Act requires that certain market participants maintain a customer call center and that customers periodically be notified on how to reach the call center. (HEPO at 11) Section 16-123 of the Act grants the Commission the authority to establish reporting requirements for such call centers. (Id.) Under Section 16-108 of the Act, the Commission can, and should, extend these requirements to MSPs. The records required by Section 460.320(a) and the annual reports required by Section 460.320 provide useful information about call center performance that no party can rightfully claim to be unduly burdensome.

E. Section 460.510 Illinois Class I Qualification

Staff maintains that a 500-hour minimum requirement for Class 1 meter workers is reasonable and appropriate. The HEPO correctly supports this position. (HEPO at 12) Even the MSP Coalition recognizes that workers must be technically competent to handle on-site work on metering equipment. (MSP Coalition BOE at 3) Furthermore, there are serious safety and system reliability concerns that any rule must acknowledge. (Id.)

Part 460 contains a 500-hour minimum Class 1 worker requirement that is a compromise based on current practice in Illinois. In its April 13, 2000 Staff Report, Staff stated: “These qualifications were developed in order to be similar to current Illinois electric utility meter worker qualifications, although there is significant variation among the Illinois electric utility meter worker training levels currently.” (Staff Report at 14) Prior to its BOE, the MSP Coalition did not take issue with this statement. Now, the MSP Coalition alleges that the 500-hour requirement specifically discriminates against small businesses and residential customers. (MSP Coalition BOE at 3) Staff disagrees. This requirement specifically protects small businesses and residential customers who will be the largest consumers of metering services provided by this class of worker.

Ameren reiterates arguments claiming that other Illinois utilities employ workers with training for Class 1 workers ranging from 40 to 500 hours. (Ameren BOE at 2) Once again, Ameren does not provide any specific examples of who those “other” utilities might be. Additionally, although Ameren states that it is “unaware of any problems” resulting from the use of a 40-hour minimum training requirement by other Illinois elec-

tric utilities, it is apparently unable to state the same for its own experience with Cellnet workers. (Id.) Furthermore, Ameren's low standards for contractors are precisely the type of cost-cutting safety risk that needs to be avoided in a fledgling competitive market. It would be extremely unfair to allow an under-trained Ameren contractor to perform meter work in an area where the incumbent utility sets high standards for safety and quality work.

The MSP Coalition incorrectly quotes Ameren when it states that Ameren is unaware of any problems that have arisen as a result of the use of a 40-hour minimum training requirement in the Ameren service territory. (MSP Coalition BOE at 4) Ameren makes no such claim in any document that is part of this proceeding. In fact, no Illinois electric utility has affirmatively stated that it has instituted a requirement for meter workers as minimal as 40 hours of on-the-job-training with no problems.

The MSP Coalition alleges that ComEd does not have standards as high as those contained in Part 460 for its workers within the ComEd service territory. (Id.) The MSP Coalition uses this as a basis for recommending that the Commission reject the 500-hour minimum training requirement. Staff strongly disagrees. The 500-hour minimum on-the-job training requirement, as with all of the requirements in Subpart E, is not intended to be the minimum qualification of any utility operating within the State. Rather, the requirements as a whole work together to be similar to those of the meter workers within the State.

The MSP Coalition attempts at this late date to introduce new facts into the record of this proceeding. Its reliance on a national uniform business practices ("UBP") initiative (MSP Coalition BOE at 4) is ill-timed and misplaced. The UBP report on which

the MSP Coalition relies is not yet final. The BOE also states that certain other commissions have adopted the standards in the UBP Draft Final Report. (Id.) However, the MSP Coalition provides no citations to any docket or any other verifiable source to its claim.

In conclusion, the 40-hour and 160-hour standards advocated by Ameren and the MSP Coalition, respectively, are inadequate. The result of the Commission adopting such a low standard is that a person with no previous experience in the electric utility industry and no related qualifications can be hired and in less than a week can be installing meters without any on-site supervision. The 500-hour standard in Part 460 amounts to less than 3 months of on-the-job training. This is hardly an overly-stringent requirement for meter workers when, as even the MSP Coalition acquiesces, there are serious safety and system reliability concerns that any rule must acknowledge.

II. ADDITIONAL CHANGES TO THE PROPOSED RULE

Staff recommends making additional changes to the version of Part 460 contained in the Appendix to the HEPO. Staff makes this recommendation in an effort to maintain consistency with the proposed 83 Ill. Adm. Code 410, "Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers," which currently is in the First Notice stage. These changes are highlighted in the attached Appendix to Staff's Reply Brief on Exceptions. Since the parties to this proceeding have not had the opportunity to review these changes, Staff would not object if a party requests that the Hearing Examiner allow a short period in which to comment on the highlighted changes.

III. CONCLUSION

For the reasons set forth, Staff respectfully requests that the Illinois Commerce Commission adopt Staff's proposed rule, attached hereto as Staff RBOE, Appendix, as the effective Commission Rule for the Second Notice Order in this proceeding.

Respectfully submitted,

LINDA M. BUELL
JOSEPH T. CLENNON
Staff Attorneys

Counsel for the Staff of the
Illinois Commerce Commission

LINDA M. BUELL
JOSEPH T. CLENNON
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217)557-1142 or 785-3808
Fax: (217)524-8928
e-mail: lbuell@icc.state.il.us
jclennon@icc.state.il.us